

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 03-56369 JRG
TERRY BROWN Chapter 13
Debtor.
_____ /

ORDER RE MOTION FOR SANCTIONS

I. INTRODUCTION

Before the court is the Chapter 13 Trustee's motion for sanctions under Bankruptcy Rule 9011 and Local Rule 9011-1, against the debtor's attorney. The basis for the Trustee's motion is the debtor's attorney's failure to maintain original documents with the debtor's original signature for documents that were electronically filed. For the reasons herein stated, the court will impose sanctions in the amount of \$250.00 to compensate the Chapter 13 Trustee for reasonable attorney's fees in bringing this motion.

II. BACKGROUND

On October 27, 2004, the debtor's attorney filed the debtor's Fourth Amended Chapter 13 Plan by electronically filing the document. [See Exhibit A.] The copy of the plan accessible electronically

1 beared the electronic signature of the debtor.¹ Thus, the debtor's
2 attorney held the Fourth Amended Plan bearing the original signature
3 of the debtor, dated October 26, 2004.

4 Later on the morning of October 27, after the Fourth Amended
5 Chapter 13 Plan was filed, the Chapter 13 Trustee's office contacted
6 the debtor's attorney. The Trustee requested that the debtor's
7 attorney remove from the plan language she found objectionable.

8 The debtor's attorney spoke with the debtor and he authorized the
9 changes. According to the debtor's attorney, this is then where she
10 made her mistake. She states that she took the original of the Fourth
11 Amended Chapter 13 plan and had her assistant type the word "Revised"
12 on the title to distinguish it from the Fourth Amended Chapter 13
13 Plan. She also made the changes to the plan as requested by striking
14 the objectionable language. She did nothing to change the signature
15 date of October 26, 2004, and the debtor did not sign the revised
16 plan. The signature on the revised plan was the debtor's signature
17 applicable to the fourth amended plan. [See Exhibit B.]

18 The debtor's attorney then had her assistant electronically file
19 the Revised Fourth Amended Chapter 13 Plan. To do this, the assistant
20 opened the computer document containing the Fourth Amended Chapter 13
21 Plan and revised the computer version to conform to the paper hard
22 copy revised plan. The computer version of the revised plan did not
23 bear the debtor's handwritten signature. The assistant then
24 electronically filed this document, which showed a signature date of
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27 ¹ An electronic signature occurs when the document contains an /s/ on the
28 signature line. The Administrative Procedures for Electronic Case Filing, applicable
in the Northern District, requires that the attorney retain the document bearing
the original signature for five years.

1 October 26, 2004, and an electronic signature. [See Exhibit C.]

2 When the Trustee became aware of the electronically filed revised
3 plan, her office requested that the debtor's attorney fax to her a
4 copy bearing the debtor's original signature. The debtor's attorney
5 then faxed the Trustee the revised plan, which was the altered
6 original of the Fourth Amended Chapter 13 Plan with the debtor's
7 signature dated the day prior and containing the changes described
8 above. [See Exhibit B.]

9 Thus, if asked to produce the original signed document of the
10 Fourth Amended Chapter 13 Plan, the debtor's attorney is unable to do
11 so, having altered the original into the Revised Fourth Amended
12 Chapter 13 Plan. In addition, if asked to produce the original signed
13 document of the Revised Fourth Amended Chapter 13 Plan, the debtor's
14 attorney is unable to do so because the Revised Fourth Amended Chapter
15 13 Plan bears the original signature from the Fourth Amended Chapter
16 13 Plan and no original signature was ever obtained on the revised
17 plan.

18 The Trustee is concerned about the integrity of the court's
19 electronic filing system. The Trustee argues that a document should
20 be filed only if a party has signed the original. According to the
21 Trustee, there is no reason that electronic filing changed the prior
22 requirements that an attorney could not file a document on a client's
23 behalf without an original signature.

24 The debtor's attorney argues that she fell into a electronic
25 filing trap and she inadvertently failed to maintain the original.
26 She asserts that nothing she did constitutes a rule violation that
27 warrants the imposition of sanctions.

28 /////

1 **III. DISCUSSION**

2 For a number of years, the federal court system has been moving
3 to a system of electronic filing. In early 2004, electronic filing
4 was introduced in the bankruptcy courts of the Northern District of
5 California. Because documents are filed electronically, the originals
6 are no longer maintained by the court. Attorneys maintain the
7 originals and are expected to be able to produce an original on
8 request of the court.

9 The electronic filing of documents in the bankruptcy courts of
10 the Northern District of California is subject to the court's CM/ECF
11 Interim Operating Order, effective July 1, 2003. The Interim
12 Operating Order states:

13 Federal Rule of Civil Procedure 83 and Federal Rules of
14 Bankruptcy 5005(a)(2), 9006(f), 9011, 9022, 9029, and 9036
15 authorize this Court to establish practices and procedures for
the filing, signing and verification of pleadings and papers by
electronic means; and therefore,

16 IT IS ORDERED that:

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18 8. SIGNATURES AND VERIFIED PLEADINGS

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20 c. The electronic filing of a document purportedly signed by
21 someone other than the Registered Participant, including
22 but not limited to the petition, statement of financial
23 affairs, and schedules of assets and liabilities, shall be
deemed a certification by the Registered Participant that
he or she has the document in question, bearing the
person's original signature, in his or her physical
possession. The Registered Participant must produce the
original signed document on request by the Court.

24 9. RETENTION REQUIREMENTS

25 With respect to any document filed electronically that purports
26 to be signed by someone other than the Registered Participant,
27 the Registered Participants shall retain the document bearing
28 the original signature until five years after the case or

1 adversary proceeding in which the document was filed is closed.²

2 Thus under the Interim Operating Order, attorneys are required
3 to keep on hand what is referred to as a "wet" original signature of
4 documents electronically filed with the court. The documents
5 maintained by the attorney are no different than the original of
6 documents that were maintained by the court prior to electronic
7 filing.

8 Here the debtor's attorney admits she made changes to the
9 original of the electronically filed fourth amended plan. She no
10 longer has on hand the original. Instead, the fourth amended plan was
11 modified when the word "Revised" was typed at the top and language in
12 the plan struck. In addition, she has electronically filed a revised
13 plan that is not the same as the revised plan she holds in her files.
14 Even if the substance of the revised plans is the same, they do not
15 represent the same document. The debtor's attorney argues that the
16 electronic filed document will not be the same as the original unless
17 the document filed with the court is scanned.

18 However, if the original document is not scanned and is instead
19 a converted word processing document, the only difference between the
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21 ² The CM/ECF Interim Operating Order allowed for the establishment of the
22 Administrative Procedures for Electronic Case Filing. The Court's Administrative
Procedures are consistent with the requirements outlined above.

23 In addition, Bankruptcy Local Rule 9011-1 provides:

24 Any petition, schedule, statement, declaration, claim or other document filed
25 and signed or subscribed under any method (digital, electronic, scanned)
26 adopted under the rules of this Court shall be treated for all purposes (both
civil and criminal, including penalties for perjury) in the same manner as
though manually signed or subscribed.

27 Failure of counsel or of a party to comply with any provision of these rules
28 or the Federal Rules of Bankruptcy Procedure shall be grounds for imposition
by the Court of appropriate sanctions.

1 document filed and the original should be that the original bears an
2 original signature and the filed document bears an /s/ on the
3 signature line. This is not the case here. [Compare Exhibits B & C.]

4 Under Bankruptcy Rule 9011(b)(3), by filing the documents with
5 the court, the attorney is certifying that to the best of the person's
6 knowledge, information and belief that "the allegations and other
7 factual contentions have evidentiary support." Here, by electronically
8 filing a document, the debtor's attorney certified that she had the
9 document in question, bearing the debtor's original signature in her
10 physical possession as required by the court's Interim Operating
11 Order. Such is not the case for both the Fourth Amended Chapter 13
12 Plan and the Revised Fourth Amended Chapter 13 Plan.

13 Under Rule 9011(c), the court may impose sanctions if it
14 determines Rule 9011(b) has been violated. Here the court believes
15 that sanctions in the amount of \$250.00 to reimburse a portion of the
16 Chapter 13 Trustee's attorney's fees is warranted. By highlighting
17 the problem with the debtor's attorney's failure to properly protect
18 and maintain the original documents, the court seeks to deter
19 repetition of such conduct or comparable conduct of others similarly
20 situated. The Chapter 13 Trustee is correct that the integrity of the
21 electronic filing system is at risk if attorneys are careless in their
22 handling of originals. In addition, attorneys must treat the filing
23 of electronic documents no differently than the court's prior system.
24 At all times and for all documents filed with the court, an original
25 signature is required. The same public policy that prevented an
26 attorney from filing a document on a client's behalf without an
27 original signature still exists in the era of electronic filing.

28 IT IS HEREBY ORDERED THAT the debtor's attorney, Elaine Seid, is

UNITED STATES BANKRUPTCY COURT

For The Northern District Of California

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to pay to the Chapter 13 Trustee \$250.00 to reimburse the Trustee for
a portion of her attorney's fees for bringing this motion before the
court.

DATED: _____

JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

1 **Case No. 03-56369 JRG**

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UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's **ORDER RE MOTION FOR SANCTIONS** by depositing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

LISA OLSEN

Office of the U.S. Trustee
U.S. Courthouse/Federal Bldg.
280 S. First St., Rm. 268
San Jose, CA 95113

E. Alexandra Delateur
Devin Derham-Burk
Office of the Chapter 13 Trustee
P.O. Box 50013
San Jose, CA 95150-0013

Elaine Seid, Esq.
Paul S. Avilla, Esq.
McPHARLIN, SPRINKLES & THOMAS LLP
10 Almaden Blvd., Suite 1460
San Jose, CA 95113

Terry Brown
21733 Granada Avenue
Cupertino, CA 95014